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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,848	05/09/2001	Andrew C. Gilbert	CF/033	3671
64558	7590	08/22/2007	EXAMINER	
FISH & NEAVE IP GROUP			AKINTOLA, OLABODE	
ROPE & GRAY LLP			ART UNIT	PAPER NUMBER
1211 AVENUE OF THE AMERICAS			3691	
NEW YORK, NY 10036-8704				
MAIL DATE		DELIVERY MODE		
08/22/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/851,848	GILBERT ET AL.
	Examiner	Art Unit
	Olabode Akintola	3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 08 June 2007.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1,3,6,8,19,32 and 34-40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3,6,8,19,32 and 34-40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/8/2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 6, 8, 19, 32, 34-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding independent claims 1, 19 and 32, the claims recite a first/second bid or offer for an item from a first trader. It is not clear what the bid or offer represents. Is it bid to buy, or bid to sell, or offer to buy, or offer to sell? The terms bid and offer needs further clarification.

Also the term first trader is not sufficiently precise. Depending on the interpretation of the bid or offer, the first trader can be interpreted as a buyer or a seller.

Furthermore since the following "bid or offer", "buyer or seller" and "buy or sell" are in the alternatives, the first bid or offer can be interpreted as simply a first bid, while the second bid or offer can be interpreted as simply a second offer making the claim ambiguous. Similarly, the first

trader can be interpreted as a buyer while the “buyer or seller” in line 9 of the claim can be interpreted as the same buyer (first trader).

Dependent claims 3, 6, 8, 34-40 are rejected on similar grounds based on their dependency. In light of this rejection, all claims are broadly interpreted as best understood.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 6, 8, 19, 32, 36-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Alaia et al. (U. S. Patent No. 6230147).

Re claims 1, 19 and 32: Alaia teaches a method comprising: receiving a first bid or offer to trade an item from a first trader; receiving a second bid or offer to trade the item from the first trader (col. 26, lines 35-55); receiving a request to cancel the first bid or offer for the item (col. 26, lines 1-16); starting a cooling off period based on receipt of the request to cancel the first bid or offer and when a difference between the price of the first bid or offer and the price of the second bid or offer is greater than a predetermined amount (col. 10, lines 24-29; col. 14, lines 1-40); receiving from a buyer or seller, during the cooling off period, an order to buy or sell the item;

suspending the order to buy or sell the item, as a result of the buy or sell order being received during the cooling off period, for a period of time for the buyer or seller to notice a change in the first bid or offer and the second bid or offer prices (col. 10, lines 24-29); wherein suspending trading further comprising setting a cooling off period (Abstract; col. 18, lines 1-15); allowing the second trader to respond to the second bid or offer upon completion of the cooling off period (col. 18, lines 1-15).

Re claims 3 and 37: Alaia teaches canceling the first bid or offer, the second bid or offer thereby replacing the first bid or offer (col. 26, lines 1-16).

Re claims 6, 36 and 38-39: Alaia teaches executing the order to buy or sell the items against the second bid or offer after the cooling off period (col. 10, lines 24-29; col. 14, lines 1-40).

Re claims 8 and 40: Alaia teaches executing the order to buy or sell against the second bid or offer without suspending the order to buy or sell the item when the price difference between the first bid or offer and the second bid or offer is less than the predetermined amount (col. 10, lines 24-29; col. 14, lines 1-40).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia as applied in claim 1 above, and further in view of Applicant's own admitted prior art (see the specification, page 2, lines 7-30).

Re claims 34-35: Alaia does not explicitly teach the step wherein at least one of the first and the second bids or offers are submitted during a period wherein the first trader and the buyer or seller has exclusivity; wherein at least one of the first and the second bids or offers are submitted during a period wherein the first trader cannot cancel bids or offers. Applicant's admitted prior art teaches these steps (page 2, lines 7-30). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Alaia to include these steps as taught by Applicant's own admitted prior art. One would have been motivated to do so in order to afford the bidder the

right of first refusal to a trade at certain level. Also, in order to give other bidders an opportunity to respond to the bids and offers before they can be cancelled by the bidders that submitted them.

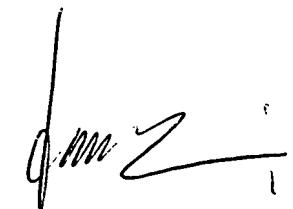
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olabode Akintola whose telephone number is 571-272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA



HANI M. KAZIMI  
PRIMARY EXAMINER